

## Fifth Supplement to Memorandum 2008-12

**Legislative Program (Material Received at Meeting)**

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The following material was received by the Commission at the meeting on June 5, 2008, in connection with Assembly Bill 850 (DeVore), and is attached as an Exhibit:

- Mary Pat Toups, Laguna Woods (6/5/08).....1 *Exhibit p.*

Respectfully submitted,

Brian Hebert  
Executive Secretary

**AB 250 - Revocable Transfer on Death Deed****Subject: Letters to the Editor****Date:** Thu, 15 May 2008 09:35:35 +0800**From:** Mary Pat Toups <toupsmp@fea.net>**To:** abajournal@abanet.org, Mary Pat Toups <toupsmp@fea.net>, Judith Legg <leggj@staff.abanet.org>

I will send this Federal Express today to the ABA Journal, attention George Hodak, 321 North Clark St. Chicago IL 60610, and to Judith Legg, Director, ABA Senior Lawyers Division.

**LETTERS TO THE EDITOR**

Thank you for publishing "Plotting Against Probate", May 2008, especially "The Latest Trend" which discusses the use of transfer-on-death deeds.

For almost 6 years I have been fighting the California Trust/Probate lawyers who are determined to prevent CA homeowners from ever using a transfer-on-death deed, as provided by AB250 Revocable Transfer on Death Deed, currently stalled in the Senate. I am the Sponsor of AB250, filed by my Assemblyman Chuck DeVore.

California has one of the most complex, expensive Probates in the nation. The CA Trust/Probate lawyers are protecting their wallets, to the detriment of their own clients and to the detriment of those low-income Homeowners who cannot afford to pay a lawyer.

As a part time, volunteer lawyer in the Senior Citizens Program of the local legal services office, I have, for over 15 years, seen low-income Homeowners who have already recorded a Quit Claim Deed or a Joint Tenancy Deed, which has resulted in disaster. They recorded these deeds in an effort to avoid Lawyers and avoid Probate.

But their Loved Ones will not return the Home to the elderly Homeowner. And the Homeowner will not allow the legal services lawyer to report this to the Police, or the District Attorney, or to Adult Protective Services, because they do not want to hurt their Loved Ones, and they do not want to lose the love of these Loved Ones.

The lucky low-income Homeowners see me to tell me they want to avoid Probate, before they sign the Quit Claim Deed or the Joint Tenancy Deed. I tell them that if they lived in 10 other states they could hold title with a Revocable TOD Deed, but not in California.

I knew who my opposition would be when I started this fight. They are rich and powerful. California was one of the last states to allow our citizens to transfer their mutual funds and securities transfer-on-death. I just hope California is not one of the last states to allow our citizens to use a Revocable Transfer on Death Deed.

Mary Pat Toups  
Laguna Woods, CA

**NOTE TO THE EDITOR**

I have been a leader in the ABA Senior Lawyers Division for many, many *since 1990* years, and I have represented the Orange County Bar Association (CA) in the ABA House of Delegates for 11 years. I am not some nut. This Letter to the Editor is true.

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**EX 1**

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## EXCERPTS FROM THE AMERICAN BAR ASSOCIATION JOURNAL ARTICLE "PLOTTING AGAINST PROBATE", May 2008 (AB250)

"The Latest Trend" - In addition, 10 states have approved the use of transfer-on-death deeds, which allow real property to pass directly to the named transferee(s) upon the property owner's death. Because the deed transfers property outside of a will, the property is not subject to probate.

After Missouri became the first state to recognize transfer-on-death deeds in 1989, eight years elapsed until another state, Kansas, enacted a similar law. Since 2000, however, Arizona, Arkansas, Colorado, Montana, Nevada, New Mexico, Ohio and Wisconsin have adopted laws authorizing transfer-on-death deeds, and other states, including California, Minnesota and Oregon, are considering their own versions.

In addition, the Uniform Law Commission is writing a Uniform Real Property Transfer on Death Act.

"Once the [uniform] act is approved, it is likely that statute will be adopted very widely" says Susan N. Gary, a professor at the University of Oregon School of Law who serves as an adviser to the commission's drafting committee for the ABA's Real Property, Trust and Estate Law Section. "I think in another year, you will have a lot of states looking at this."

Transfer-on-death deeds offer some key advantages: They are less costly than revocable living trusts. They are revocable, unlike joint ownership. They can provide alternative beneficiaries in case one or more of the named transferees predeceases the property's current owner.

There are concerns, however, that transfer-on-death deeds will hurt the ability of decedents' creditors to recover what is due them. Unlike probate, in which creditors receive notice and opportunity to file claims against the estate, transfer-on-death deeds give creditors no notice of property transfers. Thus, there is a risk that creditors will learn of a debtor's death too late to seek recoveries out of the estate's assets.

States that recognize transfer-on-death deeds have attempted to minimize this problem by giving creditors more time to initiate debt recovery proceedings against estates, although some experts note that this problem isn't unique to transfer-on-death deeds. "There are a lot of other provisions for passing property where creditors aren't notified," says Gary.

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Transfer-on-death deeds may also create difficulties for title insurers. Unlike probate, which transfers a testator's real property only after creditors have been paid and there is a clear determination of who owns the property, transfer-on-death deeds convey real estate immediately upon death --- even though claims against the property may subsequently be filed by the decedent's creditors. Until the claims period has expired, therefore, it is difficult for a company to issue title insurance on the conveyed property.

But this should not be a major problem either, according to Gary, who sees two simple solutions for title insurers. "They may not be able to issue title insurance until after the creditor's claims period has run, or they can issue the insurance with a reservation," she says.

Once attorneys, creditors and title companies become more familiar with transfer-on-death deeds, any wariness about them should dissipate, says Gary. "I think it is just a question of people getting used to the deed," she says.

STEVEN SEIDENBERG, (author) IS A LAWYER AND FREELANCE JOURNALIST IN FANWOOD, N.J. WHO CONTRIBUTES REGULARLY TO THE ABA JOURNAL.